IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMONS FOR JUDGMENT NO.76 OF 2003
IN
SUMMARY SUIT NO.1055 OF 2000

Klen Marshalls Mfrs. &
Exporters Ltd. ...Plaintiffs.

v/s

Centurion Bank Ltd. ...Defendants.

Mrs. Nalini Chidambaram with Mr. Vipul Shukla for the plaintiffs.

Dr. Virendra V. Tulzapurkar, Sr. Counsel and Ms. A. Ghone i/b Kanga & Co. for the defendants.

CORAM: V.M. KANADE, J.

DATE : 23RD AUGUST, 2004.

ORAL ORDER:

1. Plaintiffs have taken out this Summons for Judgment and has prayed that a judgment be passed in favour of the plaintiffs, directing defendant - bank to pay an amount of Rs 1,14,81,089/- with further interest @ 6% per annum on Rs. 1,00,00,000/- from the date of filing of the suit rill realization of the decreed claim along with costs.

2. Plaintiffs are a Public Limited Company engaged in the business of manufacturing and importing diverse equipment and spare parts for power project. Defendant is a Bank duly licensed by Reserve Bank of

India to carry on the business of banking within the State of India.

3. Plaintiffs' case is that the Defendant - Centurion Bank Limited gave a bank guarantee No.73/97 for Rs 1 crore on 18/02/1997 which was valid upto 17/02/1998 in respect of the plaintiffs' contract with M/s Bhupendra Industries Limited. According to the plaintiffs, the said guarantee was unconditional and irrevocable by the defendant as the said guarantee was given as a primary obligator and not merely as a surety. In the said bank guarantee, it was specifically mentioned that the defendant has waived the change of notice, addition and modification and it was further clarified that the guarantee would not be affected by the said M/s Bhupendra Industries Ltd. becoming insolvent or due to amalgamation, reconstruction and change of name of M/s Bhupendra Industries Ltd.

4. Initially when the bank guarantee was issued, it contained a clause which stated that the guarantee would become operative only on receipt of the guaranteed amount of Rs 100 lakhs from the plaintiffs. However, on the plaintiffs objecting to the said clause which was making the bank guarantee conditional subject to advance payment, the defendant - bank

issued a revised bank guarantee which did not contain the said clause. Plaintiffs' case is that having issued the unconditional and irrevocable bank guarantee and the plaintiffs having accepted and acted upon the same, defendant had no right to cancel the bank guarantee. Defendant issued a covering letter to the plaintiffs in which in paragraph No.2 defendant has stated that they guarantee that on receiving a written demand from the plaintiff's authorized signatory stating that M/s Bhupendra Industries Ltd. have failed to comply with the contractual obligations, they shall pay to the plaintiffs the guaranteed amount within two days. It further stated that the guarantee would remain in force upto March, 1998. Plaintiffs invoked the bank guarantee by telex letter dated 16/8/1997 which was before the expiry of the guarantee period. Defendant, however, by its letter dated 21/08/1997 refused to honour the bank guarantee on the contention that the plaintiffs were required to make advance payment of Rs 1 crore to the defendant and that the bank guarantee was for refund of the said advance amount. It was contended that the bank guarantee was cancelled on 07/07/1997. The Bank reiterated its stand by another letter dated 15/10/1997. Plaintiffs have, therefore, filed the present suit and taken out the Summons for Judgment.

Plaintiffs initially had claimed interest @ 18% p.a. from the due date of invocation of the bank guarantee till realization of the plaintiffs' claim. However, subsequently, plaintiffs sought an amendment of the plaint and the rate of interest was reduced to 6% p.a. from 18% p.a.

5. Defendant has filed its reply to the Summons for Judgement and has sought an unconditional leave to defend the suit. It is contended in the affidavit in reply to the Summons for Judgment that the plaintiffs, by letter dated 18/01/1997, had placed a Purchase Order with Bhupendra Industries Limited for supply of goods for a total sum of Rs 1,99,97,600/- and in the Purchase Order it was specifically stated that the advance of 50% of the total consideration of the contract would be paid by the plaintiffs to the Defendant against the bank guarantee and it was further stated that on non-delivery or cancellation of the Purchase Order, advance payment be returned or the plaintiffs would invoke the bank guarantee. Defendant has stated that pursuant to the bank guarantee, M/s Bhupendra Industries requested the defendant to issue bank guarantee in favour of the plaintiffs against the advance payment to be made by the plaintiffs and, accordingly, the bank guarantee was issued for Rs 1

crore in accordance with the terms of the said Purchase Order. In para 5(b) of the affidavit in reply dated 23/02/2001 which has been incorporated as part of the affidavit in reply of June, 2004, it is stated that the plaintiffs were required to pay 50% of the consideration in advance to the defendant, subject to which the bank guarantee would come into force and remain operative for a period of one year. That, pursuant to the letter issued by the plaintiffs dated 20/02/1997, the said clause was deleted. Defendant has further stated in the said affidavit that M/s Bhupendra Industries by their letter dated 29/03/1997 have recorded that the advance payment of Rs 1 crore has not been made by the plaintiffs and further requested the plaintiffs to remit the balance amount of Rs 86.80 lakhs after deducting an amount of Rs 13.30 lakhs which was payable to the plaintiffs. Defendant's case is that the said amount was not remitted to them. Defendant, by its letter dated 04/07/1997 addressed to the plaintiffs, recorded the personal discussions held with the representatives of the plaintiffs and has also recorded the fact that the purpose for which the bank guarantee was originally issued was not served and, therefore, requested the plaintiffs to return the bank guarantee. Thereafter, a similar letter was written dated 07/07/1997. It was

further stated that the plaintiffs, by their letter dated 12/07/1997 addressed to the defendant stated that the advance payment had been made to Bhupendra Industries Limited and, therefore, the bank guarantee could not be returned. It was stated in the reply that due to failure of the plaintiffs to make the advance payment, the Purchase Order stood cancelled and therefore the bank guarantee had become null and void. It was stated that the bank guarantee issued by the defendant was conditional on the payment of advance by the plaintiffs and the plaintiffs having failed to make the advance payment to the defendant, the bank guarantee did not come into effect and subsequently it was cancelled by the defendant.

SUBMISSIONS:

6. The learned Counsel appearing on behalf of the plaintiffs submitted that the clause regarding advance payment was deleted and, thereafter, fresh bank guarantee was issued which was duly accepted by the plaintiffs. It is submitted that the bank was legally bound to honour the said bank guarantee as it was unconditional and irrevocable and that the bank was a primary obligator and not merely a surety. It is submitted that the bank was trying to wriggle out of

the situation by falsely raising a defence that it was a guarantee against an advance payment, though there was no such clause in the bank guarantee which was issued by them and that the Bank was bound to honour the same irrespective of disputes, if any, between the plaintiffs and Bhupendra Industries. The learned Counsel submitted that the bank guarantee had specifically recorded that irrespective of any change, addition or modification in the term of contract which was to be performed or in further contract documents which may be made, it would not release the bank from any liability and the bank waived the notice of such change. It is submitted that the defence raised by the defendant was false, vexatious and, therefore, the plaintiffs were entitled for judgment and decree.

7. The learned counsel appearing on behalf of the defendant drew my attention to the covering letter dated 18/02/1997 and submitted that the provisions of the conditions of the contract were deemed to be incorporated in the bank guarantee. In view of the said covering letter, he led emphasis on the following words in support of the said submission.

> In accordance with the provisions of the conditions of the above

mentioned contract, M/s BHUPENDRA INDUSTRIES LTD. shall deposit with M/s. KLEN & MARSHALLS MANUFACTURERS & EXPORTERS LTD., a Bank Guarantee to guarantee his proper and faithful performance of the Contract in an amount of Rs. 1,00,00,000/- (Rupees One Crore only)."

He submitted that, therefore, the terms and conditions of the contract had become relevant. He, thereafter, referred to the terms and conditions of the contract which are annexed as Exhibit-A to the defendants' affidavit in reply. He relied upon one of the clauses of the said terms and conditions at Exhibit-A which reads as under:-

"Advance : 50% against Bank Guarantee eligible."

He submitted that therefore the purpose of the bank guarantee was to secure an advance which was given by the plaintiffs to the said M/s Bhupendra Industries Limited. He submitted that the plaintiffs not having paid the advance money to M/s Bhupendra Industries Limited which was evident from the correspondence of

M/s Bhupendra Industries, the bank guarantee was withdrawn on 07/07/1997 and the bank was not liable to pay the said amount. He submitted that in one another covering letter in para 2, the defendant - bank had informed the plaintiffs that on receiving the written demand from the plaintiffs that M/s Bhupendra Industries Limited have failed to comply with the contractual obligations, the defendant - Bank shall pay the said amount within two days. He submitted that the plaintiffs had not stated in their letter of invocation of the bank guarantee that M/s Bhupendra Industries Limited had failed to comply with the contractual obligations and, therefore, defendant - bank was not liable to pay the said amount. The learned Counsel, thereafter, submitted that the interest claimed by the plaintiffs @ 6% was neither under the Interest Act nor under section 34 of the Civil Procedure Code. He submitted that, therefore, the suit was not maintainable as a Summary Suit and on this ground alone Summons for Judgment is liable to be dismissed and the defendant - Bank is entitled for conditional leave to defend the suit. In support of his submission, the learned Counsel appearing on behalf of the defendant relied upon the judgment of the Apex Court in the case of **Mrs. Raj Duggal V. Ramesh Kumar Bansal** reported in **AIR 1990 SC 2218**. He

submitted that a triable issue was raised on fair dispute as to the meaning of the document on which the claim was made and further there was an uncertainty about the amount which was actually due. He further relied upon the judgement of the Apex Court in the case of **Hindustan Construction Co. Ltd. V. State of Bihar and Others** reported in **(1999) 8 SCC 436** The learned Counsel appearing on behalf of the plaintiffs has relied upon the judgment of the Apex Court in the case of **Daewoo Motors India Ltd. Vs. Union of India and Others** reported in **(2003) 4 SCC 690**.

FINDINGS:

8. In the present case, defendant - bank had given an unconditional and irrevocable bank guarantee for an amount of Rs 1 crore. The document itself does not state that the said bank guarantee was given towards the advance payment which was being made by the plaintiffs to M/s Bhupendra Industries Limited. Admittedly, the said clause was deleted and fresh bank guarantee was issued which did not contain the said clause regarding advance payment which was to be made by the plaintiffs to M/s Bhupendra Industries Limited. The bank guarantee further in unequivocal terms states that the bank would be liable irrespective of any

change, alteration or modification in the terms of the contract and that the bank waived any notice of change or modification in the terms of the bank guarantee. Further conditions are imposed that even if M/s Bhupendra Industries Limited were declared as an insolvent or were taken over by scheme of amalgamation, the bank would be liable to pay the said amount. It further stated that the bank guarantee would not be affected even if the plaintiffs show their indulgence whatsoever to Bhupendra Industries Limited. Apart from that, it was specifically mentioned in clause (iv) of the bank guarantee as under:-

> "iv) Any other reason whatsoever not mentioned above."

The bank guarantee was to remain in force until February 17, 1998. The covering letter to the said bank guarantee stated thus :-

> "In accordance with the provisions of the conditions of the above mentioned contract, M/s. BHUPENDRA INDUSTRIES LTD. shall deposit with M/s. KLEN & MARSHALLS MANUFACTURERS & EXPORTERS

> LTD., a Bank Guarantee to guarantee his proper and faithful performance of the Contract in an amount of Rs 1,00,00,000/- (Rupees One Crore only)."

The contract of bank guarantee is an independent contract between the bank and the party in whose favour the bank guarantee is issued. Parties to the contract are bound by whatever is stated in the bank guarantee. The submission of the learned counsel appearing on behalf of the defendants that by virtue of the covering letter terms of the contract are incorporated in the bank guarantee cannot be accepted. So far as the second submission of the learned Counsel appearing on behalf of the defendants is concerned, the second covering letter dated 18/2/1997 which was addressed to the plaintiffs contained a condition which reads as follows:-

> "We hereby guarantee that on receiving a written demand by your authorised signatory stating that M/s. Bhupendra Industries Ltd., have failed to comply with the contractual obligations we shall pay

to you within two days of such written demand, the amount specified in your letter of demand not exceeding Rs 100,00,000/- (Rs. One Hundred Lacs only). This guarantee shall remain in force upto March 17, 1998 and shall be irrevocable prior to that date."

The contention of the learned Counsel appearing on behalf of the defendants is that since the since the letter of invocation written by the plaintiffs did not state that M/s Bhupendra Industries Ltd. had failed to comply with the contractual obligations, the Bank was not bound to pay the said amount. This submission also cannot be accepted. In the first instance, in my view, the terms and conditions in the covering letter written by the bank to the party in whose favour the bank guarantee is issued cannot form part of the bank guarantee and, in any event, it cannot be treated as part of the bank guarantee. If such an interpretation is permitted, it would allow the bank to raise various other reasons for not accepting its liability which cannot be allowed. Apart from that, even otherwise also, from the

perusal of the letter of invocation of bank guarantee, it is clear that the plaintiffs had invoked the bank guarantee in terms of para 1 of the bank guarantee and clause 2 of the covering letter dated 18/2/1997. In any event the letter of invocation of the bank guarantee reads as under:-

> "WE HEREBY INVOKE THE BANK GUARANTEE REFERRED TO ABOVE AND DIRECT YOU TO MAKE PAYMENT WITHIN TWO DAYS FROM THE RECEIPT OF THIS INVOCATION AS PER PARA ONE IN PAGE TWO OF THE ABOVE BG AND CLAUSE TWO OF THE COVERING LETTER OF THE BG DATED 18.02.97."

Thus, the plaintiffs had also in terms stated that as per clause 2 of the covering letter they were invoking the bank guarantee meaning thereby that M/s Bhupendra Industries Limited have failed to comply with the contractual obligations. The submission of the learned Counsel appearing on behalf of the defendant that it was the bounden duty of the plaintiffs to state in categorical terms that M/s Bhupendra Industries Limited had failed to comply with the contractual obligations

and therefore the bank guarantee was not properly invoked also cannot be accepted. Plaintiffs, in fact, had in categorical terms stated that they were invoking the bank guarantee as per clause 2 of the covering letter of the bank guarantee dated 18/02/1997 which clearly indicated that M/s Bhupendra Industries Limited had failed to comply with the contractual obligations. The next submission made by the learned Counsel appearing on behalf of the defendant is based on correspondence between the Bank, M/s Bhupendra Industries Limited and the plaintiffs regarding non-payment of an advance money which was payable to M/s Bhupendra Industries Limited and, therefore, the bank was justified in cancelling the bank guarantee by its letter dated 19/07/1997. This submission also cannot be accepted. It is well settled that the bank which gives the bank guarantee is not absolved from its liability to honour the guarantee on account of any dispute between the contracting parties. The bank cannot adjudicate upon such dispute or arrive at any conclusion regarding the inter se dispute between the party in whose favour the bank guarantee is issued and the party which has asked the bank to issue the bank guarantee. In any case, the question regarding the advance

payment to the bank or to M/s Bhupendra Industries Limited has not been incorporated in the bank guarantee but was expressly excluded from the contract and, therefore, the bank now cannot take recourse to the excluded clause by relying either on the initial contract between the plaintiffs and M/s Bhupendra Industries Limited or any other clause. The defence raised by the defendant is false and vexatious. Defendant - Bank is legally bound to honour the bank guarantee.

9. The learned Counsel appearing on behalf of the defendants has placed reliance upon the judgment of the Apex Court in the case of **Mrs Raj Duggal Vs. Ramesh Kumar Bansal** reported in **AIR 1990 SC 2218.** In my view, there cannot be any dispute regarding the ratio laid down in the said judgment. In para 3 of the said judgment, the Apex Court has observed as under:-

> "3. Leave is declined where the Court is of the opinion that the grant of leave would merely enable the defendant to prolong the litigation by raising untenable and frivolous defences. The test is to

see whether the defence raises a real issue and not a sham one, in the sense that if the facts alleged by the defendant are established there would be a good or even a plausible defence on those facts. If the Court is satisfied about that leave must be given. If there is a triable issue in the sense that there is a fair dispute to be tried as to the meaning of a document on which the claim is based or uncertainty as to the amount actually due or where the alleged facts are of such a nature as to entitle the defendant to interrogate the plaintiff or to cross-examine his witnesses leave should not be denied. Where also, the defendant shows that even on a fair probability he has a bona fide defence, he ought to have leave. Summary judgments under Order 37 should not be granted where serious conflict as to matter of fact or where any difficulty on issues as to law arises. The Court should not reject the defence of the defendant

merely because of its inherent implausibility or its inconsistency."

The Apex Court in the facts of the said case and after having considered the defence which was sought to be raised and the criminal complaint which was lodged felt that triable issue arose. In the present case, from the terms of the bank guarantee, it is absolutely clear that the bank had issued irrevocable and unconditional bank guarantee as a primary obligator and not merely as a surety and was, therefore, bound to honour the said bank guarantee. The learned Counsel appearing on behalf of the defendant further relied upon the judgment of the Apex Court in the case of **Hindustan Construction Co. Ltd. V. State of Bihar and others** reported in **(1999) 8 SCC 436**. In the said case, two bank guarantees were issued; one was "performance guarantee" and the other bank guarantee was against the "mobilisation advance". Both the bank guarantees were invoked and the learned Single Judge of the Bombay High Court issued an order of injunction restraining the defendants from invoking the bank guarantees and the plaintiffs were restrained from making payment of the amount covered by the bank guarantees to the

defendants. Against the said order, an appeal was preferred before the Division Bench which vacated the injunction order in respect of the bank guarantee relating to "mobilisation advance" and an injunction in respect of "performance guarantee" was maintained. This order was challenged in the Apex Court and it was contended that the bank guarantees should be invoked only if the amount lent as "mobilisation advance" has become payable in terms of clause 9 of the principal contract and since the conditions contemplated by clause 9 did not exist, the invocation itself was bad. In the facts of the said case, the terms of the bank guarantee clearly stated that payment would be made of the amount guaranteed to the Executive Engineer on his first demand. In the said case, it was specifically mentioned that the bank guarantee could be invoked only in the circumstances referred to in clause 9 whereunder the amount would become payable only if obligations are not fulfilled or there is a misappropriation. In the light of clause 9 of the said bank guarantee, the Apex Court held that even if the Bank has used the expression "agree unconditionally and irrevocably" to guarantee payment to the Executive Engineer on his first demand, unless clause 9 was complied, the

payment was not liable to be made. The ratio of the said judgment is not applicable to the facts of the present case. In the present case, in the bank guarantee which was issued by the defendant - bank there is no such clause which indicates the payment of amount is guaranteed under the contract. In the absence of such a clause which is found in the case of Hindustan Construction Co. Ltd. (supra), the bank was legally bound to make the said payment In the said judgment, the Apex Court in paras 8 and 9 observed as under:-

> "8. Now, a bank guarantee is the common mode of securing payment of money in commercial dealings as the beneficiary, under the guarantee, is entitled to realise the whole of the amount under that guarantee in terms thereof irrespective of any pending dispute between the person on whose behalf the guarantee was given and the beneficiary. In contract awarded to private individuals by the Government, which involve huge expenditure, as, for example, construction contracts, bank guarantees are usually required to be furnished in favour of the Government to secure payments made to the

contractor as "advance" from time to time during the course of the contract as also to secure performance of the work entrusted under the contract. Such guarantees are encashable in terms thereof on the lapse of the contractor either in the performance of the work or in paying back to the Government "advance", the guarantee is invoked and the amount is recovered from the bank. It is for this reason that the courts are reluctant in granting an injunction against the invocation of bank guarantee, except in the case of fraud, which should be an established fraud, or where irretrievable injury was likely to be caused to the guarantor. This was the principle laid down by this Court in various decisions. In U.P. Coop. Federation Ltd. v. Singh Consultants & Engineers (P) Ltd. the law laid down in Bolivinter Oil SA v. Chase Manhattan Bank was approved and it was held that an unconditional bank guarantee could be invoked in terms thereof by the person in whose favour the bank guarantee was given and the courts would not grant any injunction restraining the invocation except in the case of fraud or irretrievable injury.

In Svenska Handelsbanken v. Indian Charge Chrome, Larsen & Toubro Ltd. v. Maharashtra SEB, Hindustan Steel Workers Construction Ltd. v. G.S. Atwal & Co. (Engineers) (P) Ltd., National Thermal Power Corpn. Ltd. v. Flowmore (P) Ltd., State of Maharashtra v. National Construction Co., Hindustan Steelworks Construction Ltd. v. Tarapore & Co. as also in U.P. State Sugar Corpn. v. Sumac International Ltd. the same principle has been laid down and reiterated."

"9. What is important, therefore, is that the bank guarantee should be in unequivocal terms, unconditional and recite that the amount would be paid without demur or objection and irrespetive of any dispute that might have cropped up or might have been pending between the beneficiary under the bank guarantee or the person on whose behalf the guarantee was furnished. The terms of the bank guarantee are, therefore, extremely material. Since the bank guarantee represents an independent contract between the bank and the beneficiary, both the parties would be bound by the terms thereof.

> The invocation, therefore, will have to be in accordance with the terms of the bank guarantee, or else, the invocation itself would be bad."

The Apex Court in the said judgment in view of clause 9 which is found in the bank guarantee, held that in spite of the words "agree unconditionally and irrevocably" the bank was not liable to pay as clause 9 was not complied with. The ratio laid down in para 8 and 9 of the said judgment, therefore, would be squarely applicable to the facts of the present case. The ratio of the judgment in the case of **Daewoo Motors India Ltd Vs. Union of India and Others** reported in **(2003) 4 SCC 690** also is squarely applicable to the facts of the present case. The Apex Court in para 13 of the said judgment has observed as under:-

> "13. From a perusal of the above clauses, it is abundantly clear that the bank guarantee furnished by the Bank is an unconditional and absolute bank guarantee. The Bank has rendered itself liable to pay the cash on demand by the President of India "notwithstanding any dispute raised

> by M/s. Daewoo Motors India Limited in any proceeding before any court or tribunal". It is worth noticing that the clause in the bank guarantee specifically provides that the demand made by the President of India shall be conclusive as regards the amount due and payable by the Bank under this guarantee and the liability under the guarantee is absolute and unequivocal. In the face of the clear averments, it is trite to contend that the bank-guarantee is a conditional bank guarantee. Therefore, the Bank has no case to resist the encashment of the bank guarantee. Inasmuch as we have held that the bank guarantee is an unconditional bank guarantee, the case of Hindustan Construction Co. Ltd. v. State of Bihar is of no avail to the appellant."

The Apex Court in the said case, after referring to the case of Hindustan Construction Co. Ltd. (supra), came to the conclusion that the ratio laid down in the Hindustan Construction Co. Ltd. (supra) would not be of any assistance to the appellant in the said case before the Apex Court.

The said ratio also would be applicable to the facts of the present case. The Bank has, therefore, not raised any triable issue in so far as the claim of Rs 1 crore is concerned.

10. The learned Counsel appearing on behalf of the defendant submitted that plaintiffs had claimed an interest @ 6% which is neither covered under the Interest Act nor under section 34 of the Civil Procedure Code and that the present suit also was not based on any negotiable instrument. He submitted that, therefore, the amount due was not a liquidated sum of money and, therefore, the Summary Suit was not maintainable and, on this ground alone, defendant - bank was entitled to have an unconditional leave to defend the suit. The said submission also cannot be accepted as the Full Bench of this Court in its Judgment in the case of **SICOM Ltd. V. Prashant S. Tanna** reported in **AIR 2004 Bombay 186** held that, on that ground, it cannot be said that the Summary Suit is not maintainable. In paras 12, 13, 23 and 26, the Full Bench has observed as under:-

"12. In other words, a distinction must be

drawn between the sustainability of a claim and the maintainability of the action as a summary suit. The negation of the former does not entail the negation of the latter. A suit can be said to fall outside the ambit of Order XXXVII only if the relief claimed therein is based on an action the nature of which does not fall within the classes specified in Order XXXVII, Rule 1(2). A relief cannot be said to fall outside the ambit of Order XXXVII, Rule 2 merely because the quantum thereof is excessive, so long as the nature of the relief falls within the clauses specified in Order XXXVII, Rule 1(2)."

"13. If the quantum of the claim in suit is not sustainable it is but a factor to be considered by the Judge while deciding and passing an order on, the summons for judgment. The tests for the exercise of jurisdiction while passing an order on a summons for judgment have been settled in a plethora of cases including of the Apex Court. In this reference, we are not concerned with the same.

"23.....

.....

. Thus, the Division bench expressly held that even when a part of the claim is unsustainable, it is open to the Court to pass a decree for that part of the claim for which there is no defence and unconditional leave to defend for that part of the claim for which there is some defence.

. By the same process of reasoning, it would be open in such a case for the Court to pass a conditional order in respect of that part of the claim which the Court finds to be sustainable and unconditional leave for that part of the claim for which the Court finds there is some defence. That this may be done is clear from the plain language of Order XXXVII, Rule 3. There must however be a caveat added here. In such a case it would logically follow that the consequence of non-fulfillment of the condition would apply only to that part of the claim which the Court considers

sustainable and not to that part of the claim in respect of which unconditional leave is granted."

"26.....

.....

The object underlying the summary procedure is to prevent unreasonable obstruction by a defendant who has no defence. The order is, however, confined to suits of negotiable instruments and is confined to the superior Courts. Rule 1 is being substituted to provide for extending the summary procedure to the trial of the specified classes of suits by all Courts."

(Emphasis supplied)."

Defendant, therefore, at the most would be entitled to unconditional leave so far as the interest component of Rs. 14,81,089/-_is concerned.

11. In the result, conditional leave to defend the suit is granted to the defendant - bank on its depositing an amount of Rs 1 crore in this Court within 8 weeks from today. Summons for

Judgment is disposed off accordingly.

12. Copy of this order duly authenticated by the Associate of this court be supplied to the parties.

V.M. KANADE, J.